CORRECTED COPY

No. 06-322

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

RONALD W. MORTERS,

Petitioner,

v.

AIKEN & SCOPTUR, S.C., TIMOTHY J. AIKEN, PAUL J. SCOPTUR and KELLY I. CENTOFANTI,

Respondents.

On Petition For Writ Of Certiorari To The Wisconsin Court Of Appeals, District I

PETITION FOR REHEARING

RONALD W. MORTERS
Petitioner, Pro Se
2755 Minot Lane
Waukesha, Wisconsin 53188
(262) 544-4355

QUESTION PRESENTED

I. Did the Wisconsin Court of Appeals' failure to remand the appellate frivolity matter for consideration as to whether Aiken & Scoptur's request violated Wisconsin Statutes, Sec. 814.025, and the Wisconsin Supreme Court's failure to rectify this error violate Ronald W. Morters' rights to due process of law and equal protection of the law as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Sec. 1, of the Wisconsin Constitution.

LIST OF PARTIES

The caption of this petition identifies all of the parties who have participated in both the trial court and appellate proceedings in this case. Mr. Morters' former attorneys, Robert E. Sutton and Nicholas C. Zales, did not appeal from the fee assessments against them. Because this petition involves a deprivation of Fourteenth Amendment rights by the Wisconsin courts, copies of this petition have been forwarded to the Attorney General for the State of Wisconsin.

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* Effective July 1, 2005, Sec. 814.025 was repealed and former Sec. 802.05 was repealed and recreated by the Wisconsin Supreme Court pursuant to Order No. 03-06.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Pursuant to Supreme Court Rule 44.2, the Petitioner, Ronald W. Morters, prays that the Court grant a rehearing of the Order denying his Petition for Writ of Certiorari which was entered on October 30, 2006 in Case No. 06-322.

OPINIONS BELOW

The order of the Wisconsin Supreme Court dated June 14, 2006 denying the Petition for Review is unpublished and reprinted in the Appendix ("App.") to Mr. Morters' Petition for Writ of Certiorari at G1-2. The decision of the Wisconsin Court of Appeals, District I, dated February 14, 2006 is published at 2006 WI App. 46, 289 Wis. 2d 833, 712 N.W. 2d 71 (Ct. App. 2006) and is reprinted in the Appendix at A1-11. The Order denying Mr. Morters' Petition for Writ of Certiorari is reported at the U.S. Supreme Court Website at http://www.supremecourtus.gov in the October 30, 2006 Orders List, and the Clerk of the United States Supreme Court's letter reciting the Court's Order is reprinted in the Rehearing Appendix ("R. App.") at A1.

JURISDICTION

The decision of the Wisconsin Court of Appeals, District I, was entered on February 14, 2006. A timely Petition for Review of said decision was denied by the Wisconsin Supreme Court in an order entered on June 14, 2006 thereby affirming the Court of Appeals' decision and exhausting all state judicial remedies. The petition for writ of certiorari was filed within 90 days of the date of the Wisconsin Supreme Court's order denying review. The United States Supreme Court has jurisdiction to review the order of the Wisconsin Supreme Court and the decision of the Wisconsin Court of Appeals pursuant to 28 U.S.C. § 1257(a). This petition for rehearing was filed within 25 days of the Supreme Court's Order denying the petition for writ of certiorari and is therefore timely under Supreme Court Rule 44.2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The federal Constitutional provisions involved in the case are as follows: Sec. 1 of the Fourteenth Amendment of the United States Constitution which is set forth at App. H1, the First Amendment of said Constitution which is reprinted at R. App. B1-B2, Article III, Sec. 2, paragraph 2, of the Constitution which is set forth at R. App. B1, and Article VI, paragraph 2, of the Constitution which is reprinted at R. App. B1. This case also involves Article I, Secs. 1 and 9, of the Wisconsin Constitution which are reproduced at App. H1-2. The state statute involved is Wisconsin Statutes, Sec. 814.025, which is set forth at App. H3-4.

STATEMENT OF THE CASE

For a complete recitation of the facts of this case, Mr. Morters respectfully directs this Court to the Statement of the Case contained in his Petition for Writ of Certiorari. Additional relevant facts are also set forth in the factual sections of Mr. Morters' First and Second Supplemental Briefs under Rule 15.8.

REASONS FOR ALLOWANCE OF THE PETITION FOR REHEARING

A. Introduction

According to Supreme Court Rule 44.2, the grounds for the rehearing of an order denying a petition for writ of certiorari shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Mr. Morters believes that there are other substantial grounds not previously presented by him which require a rehearing in this matter.

B. Other Substantial Grounds

In his Petition for Certiorari, Mr. Morters argued that the Wisconsin Court of Appeals' failure to remand the appellate frivolity matter for consideration as to whether Aiken & Scoptur's appellate fee request violated Wisconsin Statutes, Sec. 814.025, and the Wisconsin Supreme Court's failure to rectify this error violated his rights to due process of law and equal protection of law as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Sec. 1, of the Wisconsin Constitution. (Petition, p. 12-26) Mr. Morters' discussion in Argument Section D of his Petition[1] and in the discussion sections of his Supplemental Briefs[2] outlined the consistent pattern of constitutional rights violations and discriminatory treatment which he has faced throughout the litigation against his former attorneys. In conjunction with its supervisory role discussed in *Chandler v. Florida*, 449 U.S. 560, 570, 101 S. Ct. 802, 66 L. Ed. 2d 740 (1981) Mr. Morters urged the Court to grant certiorari to remedy these violations. (Petition, p. 27-30)

As exemplified by the fifteen page Order List issued on October 30, 2006, the Supreme Court is inundated with petitions seeking certiorari. While Mr. Morters recognizes that many certiorari petitions alleging due process and equal protection violations do not satisfy the criteria set forth in Supreme Court Rule 10 for the granting of certiorari, certain situations, such as this, mandate the highest degree of scrutiny and review by the United States Supreme Court. Mr. Morters will now discuss these additional reasons which require strict scrutiny and the granting of certiorari.

Procedural due process violations fall into two basic categories – those in which the aggrieved party contends that the procedural process afforded was somehow inadequate or insufficient and those wherein the litigant asserts

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[1] Petition, p. 20-26.

[2] First Supplemental Brief, p. 5-9; Second Supplemental Brief, p. 3-7.

that he was denied access to a particular legal process or procedure. As demonstrated by the Petition for Certiorari herein, this case falls into the latter category because Mr. Morters was denied access to Wisconsin's trial court frivolity process by the Wisconsin Court of Appeals' failure to remand. The Constitution itself and case law show that situations involving the denial of access to a legal procedure require strict scrutiny and the intervention of the Supreme Court to remedy such violations.

Article III, Section 2, of the Constitution gives the Supreme Court appellate jurisdiction in certain cases with such exceptions and under such regulations as Congress shall make. When 28 U.S.C. § 1257 was revised in 1988, direct appeals from State court judgments were abolished and certiorari became the sole path for Supreme Court review of these judgments. By virtue of this amendment, the Supreme Court was given considerable discretion in deciding what cases to accept for review and thereby manage its case load.

When 28 U.S.C. § 1257 and Congress's power to define the Court's appellate jurisdiction under Article III, Sec. 2, are read in conjunction with the First Amendment, however, Mr. Morters believes that the Court has a duty to grant certiorari in due process cases involving the denial of access to procedure. Among other things, the First Amendment provides that Congress shall make no law abridging the right of the people to petition the Government for a redress of grievances. Given the compensatory aspects of the trial court frivolity statute outlined in *Jandrt v. Jerome Foods, Inc.*, 227 Wis. 2d 531, 577, 597 N.W. 2d 744 (1999), the request for a trial court frivolity assessment certainly constitutes a petition for redress of grievances within the purview of the First Amendment.

If certiorari is not granted in cases where the denial of access to procedure is readily apparent, Congress by virtue of the jurisdiction given to the Court pursuant to Article III, Sec. 2, and the Supreme Court through the exercise of such jurisdiction are essentially making a law which abridges the

right to seek redress of grievances in the judicial forum. Thus, "access denial" cases require the strictest scrutiny and must be reviewed in order to comply with both the First and Fourteenth Amendments of the Constitution.

The right of access to a particular process is a fundamental right which can be seen in a number of different contexts. A fair trial in a fair tribunal is a basic requirement of due process. *Weiss v. United States*, 510 U.S. 163, 178, 114 S. Ct. 752, 127 L. Ed. 2d 1 (1994). The Sixth Amendment guarantees access to a jury trial in criminal cases, while the Seventh Amendment preserves such right in certain civil cases. Trial by jury has been described as a "fundamental liberty". *See Lecates v. Justice of Peace Court 4 of State of Del.*, 637 F. 2d 898, 909 (3rd Cir.1980).

Section 1 of the Fifteenth Amendment guarantees access to the right to vote regardless of race, color, or previous condition of servitude, and Section 2 of this Amendment empowered Congress to enforce the article by appropriate legislation. One example of such legislation is the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified at 42 U.S.C. § 1971, 1973 to 1973bb-4). The Nineteenth Amendment gave women access to the voting process. Numerous cases have involved protection of the public's access to the voting process. See for example, *Harper v. Virginia Board of Elections*, 383 U.S. 663, 666-670, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966) wherein the poll tax was rejected and *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 630-633, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969) wherein the Court rejected certain conditions which restricted the right to vote in school elections. Access to the political process was protected by the Court in *Williams v. Rhodes*, 393 U.S. 23, 31-34, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968) wherein unduly burdensome obstacles to third party candidates seeking a place on the presidential ballot were struck down.

In *Harper*, the Court noted that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain

them must be closely scrutinized and carefully confined. *Harper*, 383 U.S. at 670. Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause. *Kramer*, 395 U.S. at 629 citing *Harper*, 383 U.S. at 665. Such principles are equally applicable in this context where the Wisconsin courts have inexplicably denied access to the frivolity process in Mr. Morters' case while his former attorneys have had full use of such process. *Such denial of access must be strictly scrutinized through the granting of a rehearing in this case.*

The situation involving access to appellate review is very similar to that presented in the case at hand. With respect to appellate review, open access to the appellate process has been held to be vital in a number of cases. The Supreme Court has recognized that if a full and fair trial on the merits is provided, the Due Process Clause does not require a State to provide appellate review. See *Lindsey v. Normet*, 405 U.S. 56, 77, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972); *Griffin v. Illinois*, 351 U.S. 12, 18, 76 S. Ct. 585, 100 L. Ed. 891 (1956) and *District of Columbia v. Clawans*, 300 U.S. 617, 627, 57 S. Ct. 660, 81 L. Ed. 843 (1937). *When the State does provide an appeal, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others.* See *Lindsey*, 405 U.S. at 77 and *Griffin*, 351 U.S. at 18. Once a State affords appellate relief, the State may not "bolt the door to equal justice". *Griffin*, 351 U.S. at 24 (Justice Frankfurter concurring in judgment). In *Rinaldi v. Yeager*, 384 U.S. 305, 310, 86 S. Ct. 1497, 16 L. Ed. 2d 577 (1966), the Court recognized that once appellate avenues are established, *they must be free of unreasoned distinctions* that can only impede open and equal access to the Courts.

Applying these principles regarding access to appellate review to the case at hand, it is apparent that *nothing required* Wisconsin to set up a procedure for evaluating trial court frivolity and assessing costs and fees. *Such a process was enacted*, and the constitutional guarantees to

due process and equal protection of law *require* that all aggrieved parties have access to this process. As discussed on pages 20 and 21 of the Petition for Certiorari, Attorney Barr had access to the trial court frivolity process and received an award with respect to a claim which had some legal basis. Similarly, Aiken & Scoptur were able to utilize the trial court frivolity process to obtain an assessment on a claim to which the Court of Appeals presented no legal analysis as to why the claim was indefensible. (Petition, p. 24-25).

In contrast, Mr. Morters presented a wealth of authority[3] which showed that Aiken & Scoptur's appellate fee request should never have been made, *but he was inexplicably denied* access to the trial court frivolity procedure. The patent arbitrariness of the Court of Appeals' decision is underscored by its failure to include any explanation as to why the matter was not remanded. (App. A1-8) Mr. Morters clearly did not receive the equal and open access to established procedure to which he was entitled by law. The Constitution mandates that such cases involving the denial of access to due process be reviewed by the United States Supreme Court.

The possibility of an increased workload brought about by the constitutional necessity to strictly scrutinize and grant certiorari in cases involving the denial of access to process is tempered by the fact that access denial cases can often be handled in summary fashion by the Supreme Court. If the petitioner's right of access to a particular process is clear, the Court can summarily grant certiorari and remand the case to the appropriate court with instructions to give the litigant access to the process. By exercising its supervisory role in this fashion, the Court may actually reduce the number of certiorari petitions filed because the lower courts and administrative agencies will

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[3] Such authority is discussed on pages 16 through 20 of the Petition for Certiorari.

understand that insuring access to procedures, whether they are civil, criminal, or administrative, *is considered to be vitally important to the Supreme Court.*

Although it has often stated that the denial of certiorari does not import any expression of its views as to the merits of the case or whether the case was correctly decided[4] the Court should be greatly concerned that its failure to act in "access denial" situations has been and will be interpreted by the lower courts as acquiescence to such conduct. The United States Supreme Court can greatly ease its certiorari burden by insisting that the lower courts fulfill their constitutional responsibility to guarantee equal and open access to due process.

The Supremacy Clause set forth in Article VI of the United States Constitution furnishes an additional reason for a rehearing of this matter. This Clause provides that the Constitution and laws of the United States are the supreme law of the land, and the judges in every State *shall* be bound by the same. When the state courts deny a litigant equal access to a judicial process, they not only violate the Fourteenth Amendment but act contrary to the Supremacy Clause. The *will of the state court* then supplants the Constitution and its guarantees of due process as the supreme law.

Where the sufficiency or quality of the process afforded is in question, Supremacy Clause considerations are often unclear because the state court decision may have a reasonable basis even if ultimately determined to be constitutionally violative. Supremacy Clause violations involving the denial of access to due process are readily apparent since these deprivations are "either/or" propositions. Either the litigant is given access to the judicial process, or such access is denied. In this case where the

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[4] See for example, *United States v. Carver*, 260 U.S. 482, 490, 43 S.Ct. 181, 67 L.Ed. 361 (1923) and *Teague v. Lane*, 489 U.S. 288, 296, 109 S.Ct. 1060, 108 L.Ed.2d 334 (1989).

denial of due process is clear and blatant, the violation of the Supremacy Clause is obvious and must be corrected to insure that the Constitution remains supreme.

In *Tigerton v. Minniecheske*, 211 Wis.2d 777, 785, 565 N.W. 2d 586 (Ct. App. 1997), the punitive purpose of the Wisconsin trial court frivolity statute was recognized. The punitive nature of the statute and the unequal application of such penalty with regard to Mr. Morters provides another reason to strictly scrutinize the actions of the Wisconsin courts by granting a rehearing in this matter. As discussed in his Petition for Certiorari, Mr. Morter was penalized for proceeding against Barr and Aiken & Scoptur for pursuing claims which had some legal basis.[5]

The punitive attitude of the Court of Appeals is particularly evident when it criticized Mr. Morters about not having learned his lesson regarding the development of a solid argument. (See discussion on page 22 of Petition for Certiorari) Mr. Morters was even sanctioned by the Court of Appeals in the Barr litigation pursuant to the statutes for appellate rules violations for briefing deficiencies caused by his former attorney. (See Petition, p. 26) When the time arose, however, to address the possibility of punishing Aiken & Scoptur for its improper pursuit of an appellate fee assessment, the Court of Appeals declined to remand the case for consideration of this matter. Uneven punishment favoring the attorneys involved and discriminating against their former client is highly suspicious and warrants strict scrutiny.

CONCLUSION

As indicated by the criteria set forth in Supreme Court Rule 10, the granting of certiorari is generally limited to cases presenting important questions of federal law. While this case may not have a high national profile,

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[5] Petition for Certiorari, p. 20-21, 24-25.

nothing is more federally important than the preservation of equal access to due process of law which is guaranteed by the Fourteenth Amendment. *Because he believes the granting of certiorari is constitutionally mandated in cases where access to due process has been denied*, Mr. Morters now seeks a rehearing in this case.

If this Nation is to remain one governed by the rule of law, an open and level playing field must be maintained at all levels of our legal system for all persons. Otherwise, the evils referred to by John Adams as discussed on pages 6 and 7 of Mr. Morters' Second Supplemental Brief will result. Without equal access to due process, the legal system, and ultimately the Nation, will eventually deteriorate and collapse. Since the Wisconsin courts have failed in their responsibility to insure access to due process, the United States Supreme Court as the ultimate guardian of the Constitution must now remedy the violation of this right. For the reasons set forth in this Petition, Ronald W. Morters' Petition for Rehearing of the Order denying his Petition for Writ of Certiorari should be granted, and it is respectfully requested that the Court grant this Petition for Rehearing.

Dated this 15th day of November, 2006.

Respectfully submitted,

RONALD W. MORTERS
Petitioner, Pro Se
2755 Minot Lane
Waukesha, Wisconsin 53188
Telephone: (262) 544-4355

SUPREME COURT RULE 44 CERTIFICATE

I hereby certify to this Honorable Court that the reasons for seeking this Petition for Rehearing are limited to other substantial grounds not previously presented and that this Petition is being promptly presented in good faith and not for delay.

RONALD W. MORTERS
Petitioner, Pro Se

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ADDITIONAL CONSTITUTIONAL PROVISIONS INVOLVED:

UNITED STATES CONSTITUTION:

Article III, Sec. 2 (paragraph 2 only) B1

Article VI (paragraph 2 only) B1

Amendment I B1-2

REHEARING APPENDIX A

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 30, 2006

Mr. Leonard W. Schulz
W230 S8775 Clark Street
P.O. Box 238
Big Bend, WI 53103

Re: Ronald W. Morters
v. Aiken & Scoptur, S.C., et al.
No. 06-322

Dear Mr. Schulz:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

REHEARING APPENDIX B

United States Constitution

ARTICLE III

§ 2. **Jurisdiction** (paragraph 2 only)

* * *

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

* * *

ARTICLE VI

Debts; supremacy; oath (paragraph 2 only)

* * *

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * *

AMENDMENT I

Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise

thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.